



201 Pryor Street, SW • Atlanta, Georgia 30303 • 404/688-0472 • Fax: 404/577-6663

DOCKET FILE COPY ORIGINAL

August 9, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

RECEIVED

AUG 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Petition for Reconsideration of Sixth Report and Order and Eleventh Order on Reconsideration

Dear Mr. Caton:

On behalf of the Georgia Municipal Association, and pursuant to 47 C.F.R. § 1.429, enclosed for filing in the above-referenced proceeding is the original and eleven (11) copies of the Petition for Reconsideration ("Petition") of the Federal Communications Commission's Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 and 93-215.

Any questions regarding this filing should be referred to the undersigned.

Sincerely,

Donald W. Schanding
Rate Analyst

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992: Rate Regulation)
_____)

MM Docket No. 92-266 /

MM Docket No. 93-215

TO: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION BY
THE GEORGIA MUNICIPAL ASSOCIATION

James V. Burgess, Jr.
Executive Director
Georgia Municipal Association
201 Pryor Street SW
Atlanta, Georgia 30303
(404) 688-0472

August 7, 1995

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Implementation of Sections of) MM Docket No. 92-266
the Cable Television Consumer)
Protection and Competition) MM Docket No. 93-215
Act of 1992: Rate Regulation)

TO: The Commission

**PETITION FOR RECONSIDERATION BY
THE GEORGIA MUNICIPAL ASSOCIATION**

Pursuant to 47 C.F.R. § 1.429, the Georgia Municipal Association ("GMA") hereby submits this Petition for Reconsideration ("Petition") in the above-captioned proceedings. GMA requests that the Federal Communications Commission ("FCC" or "Commission") reconsider certain rules issued as part of the Sixth Report and Order and Eleventh Order on Reconsideration¹ ("Sixth Report and Order"). Specifically, GMA requests the Commission to repeal the revised small operator rate rules. To the extent the Commission decides to retain these rules, GMA urges the Commission to lower the rate that a small operator may charge without losing the presumption that its rate is reasonable.

GMA is a non-profit corporation with the principal objective of improving the quality of municipal government in Georgia. GMA is the only statewide organization dedicated solely to serving the municipal viewpoint, with a membership representing 99.9% of the municipal population in Georgia. Therefore, we believe that GMA has a unique perspective regarding the effects that the new rules will have on Georgia's cities.

¹In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation. Sixth Report and Order and Eleventh Order on Reconsideration (MM Docket Nos. 92-266 and 93-215), FCC 95-196 (released June 5, 1995).

DISCUSSION

I. The FCC Should Not Have Calculated a Presumptively Reasonable Rate of \$1.24 Using the 35 Form 1220s It Has Received

The FCC decided in the Sixth Report and Order that small operators charging rates of less than \$1.24 per channel shall be presumed to have reasonable rates. A franchising authority with the responsibility of regulating the rates of such an operator is restricted in the information it can request from the operator, and, in the event that the cable operator appeals the franchising authority's rate order, bears the burden of proving to the FCC that the operators' rates are unreasonable.

In the Sixth Report and Order, the FCC described how it arrived at \$1.24 as a presumptively reasonable rate. The FCC used 35 Form 1220 cost-of-service showings from small operators to calculate an average subscriber-weighted permitted rate of \$0.93. The FCC added one standard deviation to this number to arrive at a rate of \$1.24 as a presumptively reasonable rate for all small cable operators (see Sixth Report and Order at 33, ¶68.) We believe that the FCC's reasoning is flawed because the \$0.93 average and \$0.31 standard deviation were taken directly from Form 1220s, without regard to whether the operators calculated their permitted rates correctly.

In taking the permitted rates directly from 1220 filings, the FCC has assumed that the permitted rates shown on the face of the Form 1220 are justified, and that the operators are entitled to such rates. In other words, the FCC assumes that the Form 1220s were completed correctly. We believe that this assumption is unfounded. If the FCC were to review these forms, it would probably find that corrections should be made to the operators' calculations in a large percentage of cases. For example, several of the Form 1220s submitted to the FCC by cable operators in Georgia include a high value of intangible assets in the rate base, despite the fact that the FCC presumes such costs to be excluded. Even more significant is that in each of the nine Orders which have been adopted by the FCC in cost-of-service cases², the FCC found that the cable operator included rate base and expense items which it should not have included. In other words, the FCC determined in every case that the permitted rates as calculated by the operators were not correct.

In light of the fact that there is a strong possibility that there are errors in operators' Form 1220s, we believe that the FCC is premature in creating new rules for all small operators based on these numbers. At the very least, the FCC should complete its review of these forms before it uses the numbers on the forms to create new rules.

²For example, In re Cable TV of Georgia, L.P., Memorandum Opinion and Order, DA 94-1148, released November 9, 1994; In re Mid-Atlantic CATV Limited Partnership, Memorandum Opinion and Order, DA 94-1147, released November 9, 1994; and, In re United Video Cablevision, Inc., Memorandum Opinion and Order, DA 94-1144, released November 9, 1994.

II. Our Experiences with the Sixth Report and Order

We would like to offer some of our experiences during the past few weeks since the Sixth Report and Order was released. Cities have begun receiving letters from cable companies concerning the new rules, with warnings of future rate increases. A copy of one such letter is attached as Attachment A.

In another case, the City of Chatsworth, Georgia passed a rate order in December, 1994, which was appealed by the cable operator. The FCC denied the operator's appeal. Recently, the City received a letter from the cable operator threatening that, in light of the Sixth Report and Order, the cable operator would offset any refunds ordered by the City with a rate increase in order to recoup the refund. A copy of that letter is attached as Attachment B.

In another case, a cable operator recently furnished information to support its rate filing that the City of Aldora, Georgia had been requesting for approximately a year. The City quickly passed a rate order, on June 6, 1995. The City discovered the following week that the FCC had released rules on the previous day which made all of the energy, time and money the City had invested in regulating the cable operators' rates worthless.³ The cable operator basically stated as much to the City in a letter, a copy of which is attached as Attachment C. If not for the delays the City encountered due to the cable operator's failure to follow the FCC's rules, the City's rate order would have been issued earlier, and thus would have been valid. A few weeks later, the system was sold to one of the largest operators in the country, who does not qualify itself for small operator status, but who is nevertheless now permitted by the Sixth Report and Order to charge up to \$1.24 per channel with a presumption of reasonableness.⁴

The experiences of cities in Georgia within the past few weeks show that the Sixth Report and Order changes the rules in ways that are unfair to those franchising authorities who have invested a substantial amount of time and money in the rate regulation process. In addition, the rules are unfair to subscribers, because some cable operators will increase rates well beyond the levels which subscribers would pay if competition existed.

Although the Sixth Report and Order states that the new rules will decrease the burden on franchising authorities, that is clearly not the case. Now, in addition to the burdens that the FCC's previous rules placed on franchising authorities, they now must deal with a new form with fewer guidelines and a broader scope, and a process in which the franchising authority will bear the burden of proving that its conduct is justified at every step of the rate review. The burden on local governments will increase dramatically as a result of the Sixth Report and Order.

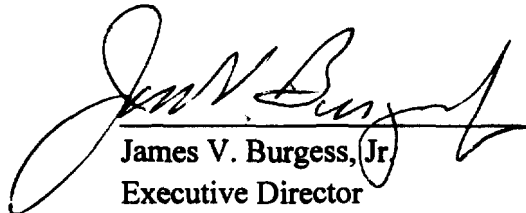
³The Sixth Report and Order states that all rate proceedings which were pending as of June 5, 1995 may be, at the small operator's option, justified using the method outlined in the Sixth Report and Order (see Sixth Report and Order at 36, ¶ 74).

⁴The Sixth Report and Order allows large cable operators who purchase systems from small operators after June 5, 1995 to use the small operator rules (see Sixth Report and Order at 21, ¶ 38).

CONCLUSION

For the reasons stated above, GMA urges the Commission to reconsider the revised small operator rate rules adopted in the Sixth Report and Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James V. Burgess, Jr.", is written over a horizontal line.

James V. Burgess, Jr.
Executive Director
Georgia Municipal Association
201 Pryor Street SW
Atlanta, Georgia 30303
(404) 688-0472

August 7, 1995



July 30, 1995

Dorsey Wilson
Mayor
City of Manchester
P.O. Box 366
122 2nd Street
Manchester, GA 31816

Dear Mayor:

Charter Communications has owned the cable system serving City of Manchester for a little more than a year. During these past months, we have put our efforts and our resources into improving service and increasing reliability for our customers. We are also working to get good programming in place.

Recently, the FCC has come forth with a new method of calculating rates of small cable systems. The FCC ruling offers some long-awaited relief to small operators, who have been paying higher costs.

In setting down the new rules the FCC says, "We acknowledge that a large number of smaller cable operators have difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks and to prepare for potential competition."

Charter is one of those cable operators. Not only does the new FCC ruling affect us, it also affects our customer's monthly bill. Although they will still pay less than \$1 per day for 31 information and entertainment channels, rates will be increased by \$2.37 beginning September 1, 1995.

The monthly increase will allow Charter to perform preventive maintenance and to take care of customers who heretofore have had some frustration in obtaining expedient service response. The increase will not go toward administering FCC regulations as was often the case prior to this recent ruling. It will go toward allowing us to remain competitive.

When the ruling was handed down, Charter did a cost of service analysis that indicated that our rates to provide service to our customers could be significantly higher. It has never been nor will it ever be our intent to put a hardship on our customers. The upcoming increase in cost is not affecting the basic cable service. Our intent is to act in accordance with the FCC's clarified ruling and do what makes sense from a business perspective for us without forgetting what makes sense for subscribers in our community. That is why our per channel rate is well below the figure given by the FCC. Customers in your area will be informed at least 30 days in advance of the rate adjustment in a bill message, beginning with the August 1 billing period statement.

The purpose of this letter is to officially notify you that Charter, using the new FCC calculations, will raise the cost to customers in City of Manchester on September 1, 1995. And, the purpose of this letter is to ask your understanding and support of how and why we are implementing the increase.

Sincerely,



Randy Hughes
District Manager

ATTACHMENT B

BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

ATTORNEYS AT LAW
3305 WISCONSIN AVENUE, N. W., SUITE 300
WASHINGTON, D. C. 20015-2003

(202) 686-0200

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP R. HOCHBERG
MARK J. FALCHICK
JAMES E. MEYERS
SUSAN E. ATHARI
THOMAS B. MAOFF
*ADMITTED IN VA ONLY

OF COUNSEL
ROBERT BENNETT LUBIC

FAX: (202) 686-6202

June 12, 1995

VIA OVERNIGHT DELIVERY

The Honorable Jerry Sanford
Mayor
City of Chatsworth
City Hall
400 North Third Avenue
Chatsworth, Georgia 30705

Dear Mayor Sanford:

C4 Media Cable SE, L.P. has asked that we respond to your letter dated June 6, 1995 to Mr. Scott Alford of C4 Media Cable, directing the company to comply with the City's December 6, 1995 Rate Order by submitting a refund plan within ten days and by providing refunds within 60 days. However, we believe that your request for a refund plan is premature.

First, as you are aware, C4 Media Cable has filed an appeal of the Cable Services Bureau's June 1, 1995 Order in this proceeding. Both C4 Media Cable's June 2, 1995 appeal and its June 7, 1995 supplement to that appeal were served on you, Mr. Schanding, and on Arnold & Porter, your Washington, D.C. counsel. C4 Media Cable's appeal corrects misinformation relied upon by the Bureau that a written copy of the City's Rate Order was made available at the December 6, 1994 hearing. The Bureau was given this misinformation by the City itself, on page 15 of the City's January 25, 1995 Opposition. Because the City was responsible for the Bureau's misinformation, C4 Media Cable expects that the City not only will refrain from attempting to enforce its Rate Order, but also will file a pleading with the FCC which corrects this misinformation.

Second, the Eleventh Reconsideration order was released by the FCC on June 5, 1995, which provides substantial rate relief to small systems operated by small cable companies. As a system of less than 15,000 subscribers, C4 Media Cable's Chatsworth system qualifies as a small system eligible for such relief. The FCC's new rules now prohibit local franchising authority rate regulation of small systems owned by small cable

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

Honorable J. Sanford
June 12, 1995
Page -2-

companies prior to May 15, 1994. Thus, C4 Media Cable has zero refund liability for the period prior to May 15, 1994. Since the City's Rate order covers the period September 1, 1993 through the date C4 Media Cable became subject to the Amended Rules, the refund provisions of the City's Rate Order cannot be enforced.

Third, even if C4 Media Cable's rates for the period September 1, 1993 through May 14, 1994 were subject to refund, there has not yet been any review of the cost of service Form 1220 filing submitted by C4 Media Cable on December 6, 1994, which replaced C4 Media Cable's Form 393 and which covered the period in question. Since the FCC rules allow the substitution of a cost of service filing where the benchmark does not provide adequate compensation, and since C4 Media Cable's cost of service filing has not been acted upon, it is premature to require a refund.

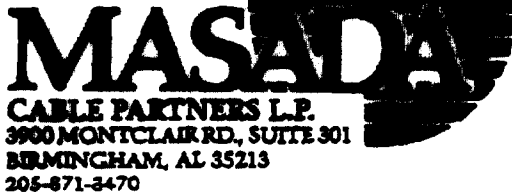
Fourth, C4 Media Cable anticipates that any refund obligation (if there is any obligation) will be more than offset by the substantial rate increases it will be permitted to implement either under its existing cost of service showing or pursuant to the Commission's new small system rules.

Please feel free to call me if you have any questions or concerns.

Sincerely yours,



Mark J. Palchick
Attorney for
C4 Media Cable SE, L.P.



June 19, 1995

Mr. Thomas H. Aiken
Town of Aldora
P.O. Drawer 158
Barnesville, GA 30204

Dear Mr. Aiken:

The purpose of this letter is to inform you of our intention to justify our existing rates under the FCC's new Form 1230 once it is released.

As you may know, the FCC has released its Eleventh Order on Reconsideration of its cable rate regulation rules. This Order permits a small system owned by a small cable company to justify existing rates, or establish new rates, by completing the new Form 1230. A "small system" is defined as a system serving 15,000 or fewer subscribers. 47 C.F.R. §76.901(c). A "small operator" is defined as an operator that serves a total of 400,000 or fewer subscribers. 47 C.F.R. §76.901(e). Our Lamar County system serves only 2000 subscribers, and Masada serves a total of approximately 71,000 subscribers over several states. Hence, Masada is eligible to justify its rates under Form 1230.

Because the City did not issue a final decision on our Form 1200 as of June 5, 1995, we are entitled to justify our rates under new Form 1230. 47 C.F.R. §76.934(h)(9). We intend to exercise this option. Hence, we advise you to discontinue consideration of our Form 1200 as that submission has become moot.

In addition, we intend to appeal to the FCC and request a stay of the City's Order concerning our Form 393 rate justification. It makes no sense for the system to adjust its rates as directed by the Form 393 Order, only to have to adjust them again in accordance the Form 1230. Such adjustments will only confuse and anger our subscribers. Indeed, the FCC's now provide that the effectiveness of a franchising authority's final decision will be automatically stayed pending the disposition of an appeal. 47 C.F.R. §76.934(h)(5)(v).

Should there be any questions concerning this matter, please
feel free to call.

Sincerely,

A handwritten signature in dark ink, appearing to read 'G.D. Barlow', written over the word 'Sincerely,'.

G.D. Barlow
Director of Operations